

shipments of tea that the English sought to tax. These Massachusetts patriots yearned for liberty, opposed "taxation without representation," and stepped into history books with this simple act of defiance.

But conspicuously absent from too many of those same history books is a group of Rhode Island men who took on the British Crown in a bold, insubordinate gesture matching the temper of their bold and insubordinate colony more than a year earlier than the Boston Tea Party. This evening, I would like to share the story of the H.M.S. *Gaspee*, a daring group of Rhode Islanders, and the real beginning of the fight for American independence.

In the early 1770s, as tensions between England and her American colonies grew increasingly strained, King George III stationed the H.M.S. *Gaspee*, under the command of Lieutenant William Dudingston, in the waters of Rhode Island. Its mission was to search incoming ships for smuggled goods and contraband and to enforce the payment of taxes.

On June 9, 1772, 237 years ago tonight, the sailing vessel *Hannah* was traveling from Newport to Providence, when it was intercepted by the *Gaspee* and ordered to stop to allow a search. On board the *Hannah*, CAPT Benjamin Lindsey refused and continued on his course, despite warning shots fired by the *Gaspee*. Under full sail and into a falling tide, the *Hannah* pressed north up Narragansett Bay with the *Gaspee* in hot pursuit. Overmatched in size, Captain Lindsey found advantage in guile and in his greater knowledge of Rhode Island waters. He led the *Gaspee* to the shallow water of Pawtuxet Cove. There, the lighter *Hannah* sped over the shallows, but the heavier *Gaspee* ran aground in the shallow waters off Namquid Point. The *Gaspee* was stuck, until the higher tides of the following day would lift her from the mud.

Captain Lindsey proceeded on his course to Providence, where he met with a group of Rhode Islanders, including John Brown, a community leader whose family helped found Brown University. The two men arranged for a meeting of local patriots at Sabin's Tavern, on what is now Providence's east side, later that evening. At the meeting, the assembled Rhode Islanders decided to act. The HMS *Gaspee* was a symbol of their oppression and she was helplessly stranded in Pawtuxet Cove. The opportunity was too good to pass up.

That night, there was no moonlight on the waters of Pawtuxet Cove. The *Gaspee* lay silent on the sandbar. Down the bay from Providence came 60 men in longboats, led by John Brown and Abraham Whipple, armed and headed through those dark waters for the *Gaspee*.

When the men reached the *Gaspee* and surrounded it, Brown called out and demanded that Lieutenant Dudingston surrender his vessel. Dudingston refused and instead ordered

his men to fire upon anyone who attempted to board the *Gaspee*.

That was all these Rhode Islanders needed to hear, and they rushed the *Gaspee* and forced their way aboard her. In the violent melee, Lieutenant Dudingston was shot in the arm by a musket ball. Rhode Islanders had drawn the first blood of the conflict that would lead to American independence, right there in Pawtuxet Cove, 16 months before the "Tea Party" in Boston.

Brown and Whipple's men seized control of the *Gaspee* from its British crew and transported the captive Englishman safely to shore. They then returned to the abandoned *Gaspee* to set her afire and watched as the powder magazine exploded, blowing the ship apart and leaving her remains to burn to the water line. That historic location is now called Gaspee Point.

Since that night in June, 237 years ago tonight when the *Gaspee* burned, Rhode Islanders have marked the event with celebration. This year, as I do every year, I will march in the annual Gaspee Days Parade in Warwick, RI. Every year, I think about what it must have been like to be among those 60 men: muffled oars on dark waters; comrades pulling with voices hushed; a shouted demand, the indignant response, and then a pell-mell rush to clamber aboard; the oaths and shouts of struggle, gun shots and powder smoke, the clash of sword and cutlass; and when it was over, the bright fire of the ship in the night, the explosion turning night to day and reverberating across the bay and the hiss and splash as the pieces fell and the water claimed the flames.

I hope that one day the tale of the brave Rhode Islanders who stormed the HMS *Gaspee* will be remembered among the other stories of the Revolution and that they will be given their due place in our Nation's history beside the tea partiers of Boston.

I hope, frankly, on an annual basis, to come back to this floor and relate that story over and over and over again. It is a proud part of Rhode Island's heritage.

TORTURE

Mr. WHITEHOUSE. Mr. President, I wish to now change the subject and speak about an incident that is not part of anybody's proud heritage and that is the evidence we have recently heard about America's descent into torture. I know it is an awkward subject to talk about, an awkward subject to think about. On the one hand, we, as Americans, love our country, we hate the violence that has been done to us, and we want more than anything to protect our people from attacks. On the other hand, torture is wrong and we have known it and behaved accordingly in far worse circumstances than now.

When Washington's troops hid in the snows of Valley Forge from a superior

British force bent on their destruction, we did not torture. When our capital city was occupied and our Capitol burned by troops of the world's greatest naval power, we did not torture. When Nazi powers threatened our freedom in one hemisphere and Japanese aircraft destroyed much of our Pacific fleet in the other, we did not torture. Indeed, even when Americans took arms against Americans in our bloody Civil War, we did not torture.

I know this is not easy. Our instincts to protect our country are set against our historic principles and our knowledge of right versus wrong. It is all made more difficult by how much that is untrue, how much that is misleading, and how much that is irrelevant have crowded into this discussion. It is hard enough to address this issue without being ensnared in a welter of deception.

To try to clarify it, I wish to say a few things. The first is that I see three issues we need to grapple with. The first is the torture itself: What did Americans do? In what conditions of humanity and hygiene were the techniques applied? With what intensity and duration? Are our preconceptions about what was done based on the sanitized descriptions of techniques justified? Or was the actuality far worse? Were the carefully described predicates for the torture techniques and the limitations on their use followed in practice? Or did the torture exceed the predicates and bounds of the Office of Legal Counsel opinions?

We do know this. We do know that Director Panetta of the CIA recently filed an affidavit in a U.S. Federal court saying this:

These descriptions—

He is referring to descriptions of EITs—enhanced interrogation techniques—the torture techniques.

He says in his sworn affidavit:

These descriptions, however, are of EITs as applied in actual operations and are of a qualitatively different nature than the EIT descriptions in the abstract contained in the OLC memoranda.

The words "as applied" and "in the abstract" are emphasized in the text.

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The questions go on: What was the role of private contractors? Why did they need to be involved? And did their peculiar motivations influence what was done? Ultimately, was it successful? Did it generate the immediately actionable intelligence protecting America from immediate threats that it had been sold as producing? How did the torture techniques stack up against professional interrogation?

Well, that is a significant array of questions all on its own, and we intend to answer them in the Senate Intelligence Committee under the leadership of Chairman FEINSTEIN, expanding on work already done, thanks to the

previous leadership of Chairman ROCKEFELLER.

There is another set of questions around how this was allowed to happen. When one knows that America has over and over prosecuted waterboarding, both as crime and as war crime; when one knows that the Reagan Department of Justice convicted and imprisoned a Texas sheriff for waterboarding prisoners; when one sees no mention of this history in the lengthy opinions of the Office of Legal Counsel at DOJ that cleared the waterboarding—no mention whatsoever; when assertions of fact made in those OLC opinions prove to be not only false but provably false from open source information available at the time; when one reads Chairman LEVIN's excellent Armed Services Committee reports on what happened at the Department of Defense, it is hard not to wonder what went wrong. Was a fix put in? And, if so, how? A lot of damage was done within the American institutions of government to allow this to happen.

If American democracy is important, damage to her institutions is important and needs to be understood. Much of this damage was done to one of America's greatest institutions—the U.S. Department of Justice. I am confident the Judiciary Committee, under Chairman LEAHY's leadership, will assure that we understand and repair that damage and protect America against it ever happening again.

Finally—and I am very sorry to say this—but there has been a campaign of falsehood about this whole sorry episode. It has disserved the American public. As I said earlier, facing up to the questions of our use of torture is hard enough. It is worse when people are misled and don't know the whole truth and so can't form an informed opinion and instead quarrel over irrelevancies and false premises. Much debunking of falsehood remains to be done but cannot be done now because the accurate and complete information is classified.

From open source and released information, here are some of the falsehoods that have been already debunked. I will warn you the record is bad, and the presumption of truth that executive officials and agencies should ordinarily enjoy is now hard to justify. We have been misled about nearly every aspect of this program.

President Bush told us “America does not torture” while authorizing conduct that America itself has prosecuted as crime and war crime, as torture.

Vice President Cheney agreed in an interview that waterboarding was like “a dunk in the water” when it was actually a technique of torture from the Spanish Inquisition to Cambodia's killing fields.

John Yoo, who wrote the original torture opinions, told *Esquire* magazine that waterboarding was only done three times. Public reports now indi-

cate that just two detainees were waterboarded 83 times and 183 times. Khalid Shaikh Mohammed reportedly was waterboarded 183 times. A former CIA official had told ABC News: “KSM lasted the longest on the waterboard—about a minute and a half—but once he broke, it never had to be used again.”

We were told that waterboarding was determined to be legal, but we were not told how badly the law was ignored and manipulated by the Department of Justice's Office of Legal Counsel, nor were we told how furiously government and military lawyers tried to reject the defective OLC opinions.

We were told we couldn't second guess the brave CIA officers who did this unpleasant duty, and then we found out that the program was led by private contractors with no real interrogation experience.

Former CIA Director Hayden and former Attorney General Mukasey wrote that military interrogators need the Army Field Manual to restrain abuse by them, a limitation not needed by the experienced experts at the CIA.

Let's look at that. The Army Field Manual is a code of honor, as reflected by General Petraeus' May 10, 2000, letter to the troops in Iraq. He wrote this:

Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. . . . In fact, our experience in applying the interrogation standards laid out in the Army Field Manual . . . shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.

We are indeed warriors. . . . What sets us apart from our enemies in this fight, however, is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect.

Military and FBI interrogators, such as Matthew Alexander, Steve Keinman, and Ali Soufan, it appears, are the true professionals. We know now that the “experienced interrogators” referenced by Hayden and Mukasey had actually little to no experience.

Philip Zelikow, who served in the State Department under the Bush administration, testified in a subcommittee that I chaired. He said the CIA “had no significant institutional capability to question enemy captives” and “improvised” their program of “coolly calculated dehumanizing abuse and physical torment.” In fact, the CIA cobbled its program together from techniques used by the SERE Program, designed to prepare captured U.S. military personnel for interrogation by tyrant regimes who torture not to generate intelligence but to generate propaganda.

Colonel Kleinman submitted testimony for our hearing, in which he stated:

These individuals were retired military psychologists who, while having extensive experience in SERE (survival, evasion, resistance, and escape) training, collectively possessed absolutely no firsthand experience in the interrogation of foreign nationals for intelligence purposes.

To the proud, experienced, and successful interrogators of the military and the FBI, I believe Judge Mukasey and General Hayden owe an apology.

Finally, we were told that torturing detainees was justified by American lives saved—saved as a result of actionable intelligence produced on the waterboard. That is the clincher, they say—lives saved at the price of a little unpleasantness. But is it true? That is far from clear.

FBI Director Mueller has said he is unaware of any evidence that waterboarding produced actionable information. Nothing I have seen convinces me otherwise. The examples we have been able to investigate—for instance, of Abu Zubaida providing critical intelligence on Khalid Shaikh Mohammed and Jose Padilla—turned out to be false. The information was obtained by regular professional interrogators before waterboarding was even authorized.

As recently as May 10, our former Vice President went on a television show to relate that the interrogation process we had in place produced from certain key individuals, such as Abu Zubaida—he named him specifically—actionable information. Well, we had a hearing inquiring into that, and we produced the testimony of the FBI agent who actually conducted those interrogations.

Here is what happened. Abu Zubaida was injured in a firefight and captured in Afghanistan. He was flown to an undisclosed location for interrogation. The first round of interrogation conducted professionally by Soufan and his assistant from the CIA produced such significant intelligence information that a jet with doctors on it was scrambled from Langley—from this area—and flown to the undisclosed location so that the best medical care could be provided to Abu Zubaida so he could continue to talk. That was the first round of information.

In the second interrogation, conducted consistent with professional interrogation techniques, Abu Zubaida disclosed that the mastermind of the 9/11 attacks was Khalid Shaikh Mohammed. That may be the apex piece of intelligence information we have obtained during the course of the conflict.

At that point, the private contractors arrived, and for some reason Abu Zubaida was handed over to them so they could apply their enhanced interrogation techniques. Ali Soufan testified that at that point they got no further information. What triggered the first round of information was that Soufan knew about Zubaida's pet name that his mother used for him. When he used that nickname, Zubaida fell apart. He didn't know how to defend himself, and he began to disclose this very important information.

Knowledge, outwitting people, playing on mental weaknesses, taking advantage of our skills as Americans—that is what worked and got the information about Mohammed. He was

turned over to the private contractors for enhanced techniques and they got nothing.

It was then determined that because the interrogation had become unproductive, he should be returned to the FBI agent and CIA agent who had twice interrogated him. It was in the third round that he disclosed information about Jose Padilla, the so-called dirty bomber, which was so important that Attorney General Ashcroft held a press conference, I believe in Moscow, to celebrate the discovery of this information. Again, for some reason, he was turned back again to the private contractors for the application of more abusive techniques, and again the flow of information stopped.

For a third time, he was returned to the FBI and CIA agents again for professional interrogation, but by now he had been so compromised by the techniques, even they were unsuccessful in getting further information.

As best as I have been able to determine, for the remaining sessions of 83 waterboardings that have been disclosed as being associated with this interrogation, no further actionable information was obtained. Yet the story has been exactly the opposite. The story over and over has been that once you got these guys out of the hands of the FBI and the military amateurs and into the hands of the trained CIA professionals, who can use the tougher techniques, that is when you get the information. In this case, at least, the exact opposite was the truth, and this was a case cited by the Vice President by name.

The costs of this could be high. There has been no accounting of the wild goose chases our national security personnel may have been sent on by false statements made by torture victims seeking to end their agony; no accounting of intelligence lost if other sources held back from dealing with us after our dissent into what Vice President Cheney refers to as the "dark side"; no accounting of the harm to our national standing or our international good will from this program; no accounting of the benefit to our enemies' standing—particularly as measured in militant recruitment or fundraising; and no accounting of the impact this program had on information sharing with foreign governments whose laws prohibit such mistreatment.

At the heart of all these falsehoods lies a particular and specific problem: The "declassifiers" in the U.S. Government are all in the executive branch. No Senator can declassify, and the procedure for the Senate as an institution to declassify something is so cumbersome that it has never been used. Certain executive branch officials, on the other hand, are at liberty to divulge classified information. When it comes out of their mouth, it is declassified because they are declassified. Its very utterance by those requisite officials is a declassification. What an institutional advantage. The executive

branch can use, and has used, that one-sided advantage to spread assertions that either aren't true at all or may be technically true but only on a strained, narrow interpretation that is omitted, leaving a false impression, or that sometimes simply supports one side of an argument that has two sides—but the other side is one they don't want to face up to and don't declassify.

One can hope the Obama administration will be more honorable. I suspect and believe they will be. But the fact is that a cudgel that so lends itself to abuse will some day again be abused, and we should find a way to correct that imbalance. It is intensely frustrating to have access to classified information that proves a lie and not be able to prove that lie. It does not serve America well for Senators to be in that position.

Chairman LEVIN has already done excellent work in the Armed Services Committee, and there is no reason to believe that good work won't continue. Chairman ROCKEFELLER has done excellent work in the Intelligence Committee, and his successor, Senator FEINSTEIN, has picked up the mantle and continues forward with energy and determination. We can be proud of what she is doing. Chairman LEAHY has begun good work in the Judiciary Committee, and more will ensue when we see the report of the Department of Justice Office of Professional Responsibility about what went wrong in the Office of Legal Counsel. The new administration, I hope and expect, is itself drilling down to the details of this sordid episode and not letting themselves be fobbed off with summaries or abridged editions. In short, a lot is going on, and a lot should be going on.

While it is going on, I want my colleagues and the American public to know that measured against the information I have been able to gain access to, the story line we have been led to believe—the story line about waterboarding we have been sold—is false in every one of its dimensions.

I ask that my colleagues be patient and be prepared to listen to the evidence when all is said and done before they wrap themselves in that story line.

I thank the Presiding Officer. I know the hour is late. I appreciate his courtesy.

HONORING OUR ARMED FORCES

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of Major Matthew Philip Houseal, from Amarillo, TX. Matthew was 54 years old when he lost his life on May 11, 2009, from injuries sustained from a noncombat related incident in Baghdad, Iraq. He was a member of the 55th Medical Company, U.S. Army Reserve, Indianapolis, IN.

Today, I join Matthew's family and friends in mourning his death. Matthew will forever be remembered as a

loving husband, father, son, and friend to many. He is survived by his wife Dr. Luzma Houseal; seven children, Teresa, Catherine, David, Isabel, Patrick, Monica and Kelly; his parents, William and Helen Houseal; eight siblings, Dr. Timothy Houseal and wife Leslie, U.S. Army Retired LTC Stephen Houseal and wife Julie, Joseph Houseal, Friar David Houseal, John Houseal and wife Gail, U.S. Air Force COL Anne T. Houseal and husband Paul Houser, Elizabeth Nightingale, and Maria Johnston and husband Jeff; 26 nieces and nephews; and a host of other friends and relatives.

Matthew, a native of Washington, DC, grew up in St. Joseph, MI, and received a bachelor's degree, master's degree, and medical degree from the University of Michigan. He spent his surgical internship at Henry Ford Hospital and went through the Officers Training School in the U.S. Navy. He served his psychiatry residency at Texas Tech University in Lubbock, TX, and spent over a decade at the Texas Panhandle Mental Health Mental Retardation, where he was a beloved member of the staff. He joined the Army Reserve as a major in 2007.

Matthew had many passions in life: known as a brilliant physician and an insatiable learner, Matthew held a private pilot license and was a certified flight instructor with more than 10,000 hours of flight time in different types of aircraft. His extraordinary accomplishments were only rivaled by his passion for his family, especially his seven children.

While we struggle to express our sorrow over this loss, we can take pride in the example Matthew set as a soldier and as a father. Today and always, he will be remembered by family and friends as a true American hero, and we cherish the legacy of his service and his life.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in knowing that Matthew's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of MAJ Matthew Philip Houseal in the official RECORD of the Senate for his service to this country and for his profound commitment to freedom, democracy and peace. I pray that Gary's family can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."